



Memorandum

TO: PLANNING COMMISSION

FROM: Stephen M. Haase

SUBJECT: SEE BELOW

DATE: January 30, 2004

COUNCIL DISTRICT: 6

SUBJECT: CP03-055, PROTEST OF A MITIGATED NEGATIVE DECLARATION FOR A CONDITIONAL USE PERMIT TO ALLOW THE DEMOLITION OF TWO RESIDENTIAL UNITS AND TENNIS COURTS AND THE CONSTRUCTION OF AN APPROXIMATELY 2,500 SQUARE-FOOT COACHES' BUILDING, A SWIMMING POOL, NEW PLAYING FIELDS AND RECONFIGURED PARKING ON AN 8.80 GROSS ACRE PRIVATE SCHOOL SITE LOCATED ON THE EAST SIDE OF BOOKSIN AVENUE APPROXIMATELY 550 FEET SOUTHERLY OF CURTNER AVENUE.

BACKGROUND

This report addresses the protest of a Mitigated Negative Declaration for a Conditional use Permit to allow modifications to an existing private school site which include: construction of a swimming pool, a 2,500 square-foot coaches' building, playing fields and associated site improvements and demolition of two duplexes and four tennis courts.

The existing school is located on an 8.80 acre "through lot" with street frontage on both Plummer and Booksin Avenues. Vehicular access to the school is from Plummer Avenue. Two existing duplexes and existing tennis courts are located along the site's Booksin Avenue frontage. St. Christopher's School and single-family residences are located to the north of the site. Single-family residences and a residential care facility are located to the south, and single-family residences are located to the east and west.

CEQA Mitigated Negative Declaration Requirements

A Mitigated Negative Declaration (MND) must be prepared in conformance with the California Environmental Quality Act (CEQA) of 1970, as amended. Public Resources Code Section 21064.5 and CEQA Guidelines Section 15070 state that a MND may be prepared if the Initial Study identifies a potentially significant effect for which the project proponent has made or agrees to make project revisions that clearly mitigate the effects. Additionally, an MND may not be used if any substantial evidence indicates that the revised project with mitigation may still have a significant effect on the environment.

Mitigated Negative Declaration

On December 19, 2003, the Director of Planning, Building and Code Enforcement (PBCE) completed an Initial Study, and circulated an MND for the proposed project to property owners and occupants within 1,000 feet of the project site. The MND and Initial Study were available (1) at the Department of Planning, Building and Code Enforcement, (2) on line on the Department's website, (3) at the Martin Luther King Jr. Library, and (4) at the Willow Glen Branch Library. The public review period began on December 19, 2003, and ended on January 8, 2004.

Letters of Protest

On January 8, 2004, a letter protesting the adequacy of the MND was filed in the Department of Planning, Building and Code Enforcement by seven individuals who live or own property on Booksin Avenue. The issues raised in the letter are summarized in the Analysis section below. The letter is attached to this report.

MND Protest Hearing Procedure

San Jose Municipal Code Section 21.06.030 sets forth the MND protest hearing procedure. If, after reviewing the protest, the Director of Planning adopts the Negative Declaration, the Planning Commission must hold a noticed public hearing on the MND protest to consider all relevant information and materials concerning whether the project may have a significant effect on the environment. The action of the Planning Commission in considering the protest is limited to environmental issues. If the Commission finds that the project may have a significant effect on the environment, the Commission must require the preparation of an Environmental Impact Report. If the Planning Commission finds that the project will not result in a significant impact on the environment and upholds the action of the Director, the Negative Declaration becomes final and no further appeals on the matter may be considered.

ANALYSIS

Following is a summary of the issues raised in the protest letter, followed by staff responses:

Comment: *The protest states that the noise analysis contained in the Initial Study was faulty because it reflects only noise levels, as measured in decibels, and fails to address the quality, type, and frequency of the noise to be generated at the sports facilities. Specific concerns are that the sounds of whistles, cheering spectators, public address system announcements, and bats hitting balls cannot be compared to traffic noise as was done in the Initial Study.*

Response: This project would be considered to result in a significant noise impact if it exposed adjacent residential land uses to noise in excess of the applicable General Plan Noise Guidelines or exposed adjacent residents to significant increases where existing noise levels already exceed the General Plan levels. The City's guidelines are consistent with

those promulgated by the U.S. Environmental Protection Agency (EPA) and the State of California. An increase of three decibels over existing levels is a barely perceptible change that is not considered significant.

The General Plan specifies that when located adjacent to sensitive residential uses, non-residential land uses should mitigate noise so that it does not exceed 55 dB DNL at the residential property line. The DNL is a weighted day/night average that adds a 10 dB penalty to noise occurring in the late night and early morning hours, thus taking into account the loudness of noise events, their frequency, and the time of day in which they occur.

The noise analysis included in the Initial Study, quantified the noise levels associated with the proposed sports facilities based on noise levels measured at similar facilities located throughout the Bay Area. These measurements were used to calculate the DNL noise levels generated by the swimming pool and playing fields at the closest residence. These calculated levels were then compared to both existing measured noise levels and the *General Plan* Noise Compatibility Guidelines. This analysis indicated that in no case would there be a greater than 3 decibel increase over existing noise levels, nor would there be an exceedance of the 55 dB DNL General Plan Guideline. Based on this analysis, the Mitigated Negative Declaration concluded that the project would not result in a significant noise impact.

The Initial Study compares noise from the proposed on-site playing field with traffic noise from Booksin Avenue and concludes that traffic noise is substantially louder than noise from on-site athletic activities. The fact that traffic noise generated west of the duplexes is louder than noise generated on the site as result of this project, is germane to the question of what effect removing the duplexes would have on the noise environment at the residences along Booksin Avenue. Based on the fact that the dominant noise source is located on the neighborhood side of the duplexes, the noise analysis concludes that removal of the duplexes would not cause a significant difference in noise from the soft ball fields.

Comment: *The protest indicates that the noise analysis fails to take into account any effect the existing duplexes may have in shielding residences from school-generated noise, and therefore the removal of the duplexes will result in a noise increase. The protest also asserts that the supplemental analysis conducted to determine the effects of removing the duplexes only addresses noise from the softball field and not noise from the soccer/field hockey field.*

Response: The effect of the duplexes on noise levels was addressed in the noise study, as summarized on pages 41-42 of the Initial Study. Projected noise levels took into account the removal of the duplexes and such levels were determined to be not significant. As stated in both the supplemental analysis (Appendix E of the Initial Study) and the text of the Initial Study itself, the noise analysis conducted for the

project assumed that the soccer/field hockey field would be located where the duplexes currently exist and no credit for sound buffering was included in the analysis. Further, the Initial Study notes that there may be occasional audible sounds during lulls in traffic which would not now be heard because of the buffering provided by the duplexes; however, there would be no difference in measured noise levels at the Booksin Avenue residences on the western side of the street (page 42).

The Initial Study indicates that the soccer/hockey field will not be used concurrently with the softball field. Noise associated with use of the softball field is anticipated to be louder than noise associated with use of the soccer/hockey field (based on actual measurements taken at similar facilities); therefore, noise associated with softball represents a worst case analysis in conformance with the requirements of CEQA.

Comment: *The protest states that noise generated by shouting and cheering (61-66 dBA) would exceed the City's guidelines of 55 dBA DNL. The protest also states that the project will increase the frequency of softball practices.*

Response: The 61-66 dBA range represents maximum noise levels, while the day-night level (DNL) noise descriptor addressed in the General Plan Noise Guidelines represents average noise levels. Although the maximum noise levels exceed 55 dB, the average noise level does not exceed the City's guideline of 55 dB DNL. The DNL is used in the City's noise guidelines because it takes into account noise intensity, noise frequency, and the time of day noise occurs.

The DNL at the closest residence to the swimming pool would be 52 dBA, which would not exceed the 55-dBA DNL *General Plan* Noise Guideline.

As stated on page 40 of the Initial Study, approximately 30 games per year would be played on the field.

Comment: *The protest asserts that the proposed public address (P.A.) system will have a significant and detrimental effect on the neighborhood.*

Response: The noise analysis evaluated the impact of the P.A. system at the pool and the P.A. system at the softball field, as summarized on pages 40-41 of the Initial Study. Noise generated by each of the P.A. systems was quantified and found to have an insignificant effect at nearby residences. The P.A. systems will be used only for games/matches that will conclude at approximately 6 p.m., so nighttime noise impacts associated with P.A. announcements will not occur. [Note: Under existing conditions, a portable P.A. system is utilized for softball games and a permanent, exterior system currently exists on the gym building for school bells and announcements.]

Comment: *The protest states that the Initial Study is deficient because it fails to analyze the noise impacts of the proposed sports facilities from events that are scheduled on weekends.*

The neighbors state that the impact of sporting events on the weekend will be greater because background noise is significantly lower than during weekdays.

Response: Noise levels generated by sporting events would be the same on weekends as on weekdays and would not exceed the 55 dB DNL General Plan noise guideline. There is no evidence to indicate that background noise levels on weekends is measurably different than on weekdays. Lower work/commute traffic volumes on weekends are substantially offset by higher volumes due to shopping, recreational activities, church events, etc. Further, background noise due to non-traffic activities (e.g., lawnmowing, leaf blowing, home improvement projects, outdoor recreation, etc.) is typically higher on weekends than on weekdays. Furthermore, no games or matches would be held on Sunday, per athletic league requirements.

Comment: *The protest requests that the playing field be set back further from the property line and that limits be placed on usage of the fields to reduce noise levels.*

Response: The proposed project includes a setback of 10 feet between the fence and the property line along the Booksin Avenue frontage. Based on the conclusion of the Initial Study that the operation of the proposed facilities would not result in any significant noise impact, no additional noise mitigation is required for this project. It should be noted that an additional 10-foot setback would yield very little in the way of noise reduction.

Visual/Aesthetic Issues

Comment: *The protest states that the proposed removal of the two duplexes and their replacement with softball/soccer fields would constitute a significant adverse visual impact to the neighborhood.*

Response: As noted in the checklist on page 15 of the Initial Study, the CEQA Guidelines define a significant visual/aesthetic impact as a project that would affect scenic vistas and/or scenic resources, would substantially degrade an area's visual quality, or would create substantial light or glare. The Initial Study evaluated the project utilizing these criteria.

There are no scenic vistas or resources currently present in the project vicinity. As noted in the Initial Study, and as acknowledged in the Protest, existing views toward Presentation High School from Booksin Avenue are primarily of the duplexes and the tennis courts. Upon removal of the duplexes and tennis courts, views would be of the playing fields (with an 8-foot high vinyl clad fence and landscaping) in the foreground with the school buildings in the background. The distance from the closest Booksin Avenue residence to the closest school building (the gym) would be approximately 400 feet. While views of the site would clearly change as result of this project, this change is not considered a significant visual impact and the resulting views would not be incompatible with the surrounding neighborhood.

The project will not result in substantial new light or glare in the residential neighborhood.

Comment: *The protest states that the construction of the project will expose residents living on Booksin Avenue to Presentation High School's 2-story theatre building that was constructed in 2001.*

Response: The theatre building will not be visible from Booksin Avenue as it is located behind the existing gym, as shown on Figure 3 of the Initial Study.

Comment: *The protest states that the Initial Study is deficient since it fails to address potential visual problems that may occur if landscaping on the school property is not adequately maintained.*

Response: The failure of any property owner to adequately maintain his/her property is a code enforcement issue and is outside the scope of a CEQA document. Should landscaping maintenance become a problem on this site or any other, the City has the ability to enforce the requirements of the approved landscape plan.

Land Use Compatibility Issues

Comment: *The protest asserts that the nature of the proposed project is such that it "will completely change the residential character of the environment." The primary basis for this assertion is that the two duplexes on the school site on Booksin Avenue will be replaced with playing fields surrounded by a fence. Further, the protest states that the nature of noise associated with various sporting events (e.g., whistles blowing, cheering spectators, p.a. announcements, bats hitting balls, etc.) would be annoying and incompatible with the neighborhood.*

Response: As noted in the checklist on Page 35 of the Initial Study, the CEQA Guidelines identify a significant land use impact as a project that would: conflict with any applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental impact; conflict with any applicable conservation plan; or physically divide an established community.

The project proposes to remove the existing residential uses that currently occupy slightly over half of the project frontage on Booksin Avenue and to replace these uses and the existing tennis courts with school playing fields. The Initial Study correctly identifies that the proposal conforms to the General Plan designation of Public/Quasi Public and is consistent with the General Plan noise policies. The Zoning Ordinance allows private schools in the subject R-1-8 Residence District with a Conditional Use Permit. The General Plan and Zoning Code provisions reflect the fact that schools and public parks (with playing fields) are traditionally located in or near residential neighborhoods.

The fact that a Conditional Use Permit is required for a new or modified private school use reflects, in part, the need for scrutiny of such a use to ensure that it is designed and operated in a manner that is compatible with the surrounding neighborhood. The noise analysis for this project indicates that the proposal will not result in noise impacts on proximate residential uses and the project design includes a fence to prevent the athletic activity from spilling out into the neighborhood and significant new landscaping at the Booksin frontage to soften views of the playing fields and school structures beyond.

The Initial Study correctly identifies that addition of playing fields in the area of the site where the duplexes and tennis courts now exist will not physically divide an established community or conflict with any applicable conservation plan.

Based on the above, staff concludes that the project is compatible with the residential uses on Booksin Avenue and that the Initial Study and Negative Declaration correctly conclude that the project would not result in a significant land use impact.

Other Issues

Comment: *The protest requests that the City require asbestos testing before and during the demolition of the two duplexes.*

Response: The Initial Study (page 32) correctly states that, in the event asbestos-containing materials are found in the duplexes, standard procedures will be followed pertaining to the removal and disposal of such material. These procedures require the presence of asbestos to be addressed in conformance with the requirements of the Bay Area Air Quality Management District prior to issuance of a Demolition Permit for the residential structures.

Comment: *The protest requests that an additional public meeting be held on the project.*

Response: This Protest of the Negative Declaration will be the subject of a public hearing before the Planning Commission currently scheduled for February 11, 2004 at 6:00 p.m. in the City Council Chambers. A public hearing on the Conditional Use Permit is also scheduled to be held that same evening.

Comment: *The protest includes requests for additional modifications to the project and limitations on the use of the proposed facilities.*

Response: The Initial Study and Mitigated Negative Declaration include mitigation sufficient to reduce all potentially significant impacts of the proposed project to a less than significant level in conformance with the requirements of CEQA. No additional

measures or modifications are necessary for this project in order to mitigate a significant impact pursuant to CEQA.

Comment: *The protest states that the project will cause property values to decrease.*

Response: Property values are an economic issue and are not an environmental impact under CEQA. There is no evidence that this project will cause a significant decline in the physical condition of the surrounding neighborhood or that it would result in a significant land use impact that would require the preparation of an Environmental Impact Report.

Comment: *The protest states that the applicant's representative had led the neighborhood to believe that an EIR would be prepared. The protest questions whether there are aspects of the project not being disclosed to the neighborhood due to the failure of the City to prepare an EIR.*

Response: The City, not the applicant, is responsible for determining the appropriate environmental document to be prepared under CEQA. For this project, the Director of Planning has concluded that an Initial Study/Mitigated Negative Declaration is appropriate because the project will not result in any unmitigated significant environmental impacts. An EIR would be required only if the analyses determined that one or more significant and unmitigated environment impacts would occur.

The technical studies undertaken as part of the Initial Study are the same as those that would have been undertaken as part of an EIR. In other words, there is no information about the environmental effects of the proposed project that has not already been disclosed in the Initial Study.

CONCLUSION

Based upon the above analysis, staff concludes that the Initial Study adequately addressed the environmental effects of the proposed project, that the Mitigated Negative Declaration accurately concluded that the project would not result in any significant environmental impacts and that the preparation of an Environmental Impact Report for this project is not required.

ALTERNATIVE ACTION

The alternatives available to the Planning Commission are to (1) uphold the Negative Declaration for the proposed project, or (2) require the preparation of an EIR.

RECOMMENDATION

The Director of Planning, Building & Code Enforcement recommends that the Planning Commission uphold the Mitigated Negative Declaration prepared for the proposed project.

Stephen M. Haase, AICP, Director
Planning, Building and Code Enforcement

Attachments

c: Bruce McCombs, 2203 Booksin Avenue, San Jose, CA, 95125
Harry Lim, 2299 Booksin Avenue, San Jose, CA, 95125
Russ Lujan, 2295 Booksin Avenue, San Jose, CA, 95125
Jutta Hilde Melzig, 2291 Booksin Avenue, San Jose, CA, 95125
Chuck Konecky, 2287 Booksin Avenue, San Jose, CA, 95125
Kathie Gutierrez, 2283 Booksin Avenue, San Jose, CA, 95125
Bob Masterson, 2279 Booksin Avenue, San Jose, CA, 95125
Keith Meyer, 1038 Leigh Avenue, Suite 100, San Jose, CA 95125
Mary Miller, 2281 Plummer Avenue, San Jose, CA 95125